This particular provision, therefore, seems especially subject to serious objections. The small margin of safety which may result, is one with which no prudent man would be satisfied in making a loan of his own funds, and one that no experienced lawyer or banker would permit a client or customer to accept. *Per contra,* where the assessment is far below the real value, the effect of the statute is to diminish the value of real property as a security, and consequently its availability to the owner for that purpose.

When, therefore, the unwritten rule, or custom, is compared with the statutory rule, one may well doubt whether the old is not better than the new, and may well ask what real purpose was intended to be accomplished by this particular provision, or indeed by any other provision within the four corners of the Act.

When it is remembered with what care equity has established its very safe and reasonable rules for the protection of the funds of widows and orphans, lunatics, and other dependent persons, and of charitable and educational institutions, and similar trusts, one cannot but deplore any relaxation of these rules, or any restriction of the field for the selection of investments by those charged with the safeguarding of such funds. On the whole, this entire legislation seems unwise, as unsettling old and established rules, as jeopardizing the safety of trust funds, as unreasonably restricting fiduciaries in the selection of investments, and, finally, as inviting litigation to interpret its meaning.

W. M. LILE.

WILLS—CONSTRUCTION—THE DOCTRINE OF MAY *v.* JOYNES—HOW AFFECTED BY § 5147, CODE 1919.—*If an estate be limited for life, but with absolute power of disposition in the life tenant, then the fee passes and any remainder over is void.* Such is the doctrine of *May* v. *Joynes.*[1] It is the purpose of this article to discuss the status of the doctrine in Virginia today. For convenience of treatment, the doctrine will be divided into two parts and these parts discussed separately.

(1) *If any estate be limited for life, but with absolute power of disposition by deed inter vivos as well as by will, then the fee passes.* That such is the law in Virginia today is reaffirmed by the Supreme Court of Appeals in the case of *Davis* v. *Kendall,*[2] decided in June, 1921. Whatever may be the view in other jurisdictions, [3] the Virginia court sees in this doctrine the true inter-

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[1] 20 Gratt. 692.

[2] (Va.) 107 S. E. 751. Other cases holding this doctrine are Farish *v.* Wayman, 91 Va. 430, 21 S. E. 810, Note, 1 Va. Law Reg. 219; Bing *v.* Burrus, 108 Va. 478, 56 S. E. 222; Honaker *v.* Duff, 101 Va. 675, 44 S. E. 900; Brown *v.* Strother, 102 Va. 145, 47 S. E. 236; Note, 3 Va. Law Reg. 65.

[3] In many jurisdictions, the will of the testator is thought to be found in the literal meaning of the words which he uses. The devise of a life estate with absolute power of disposition is looked upon as

pretation of testamentary intent. The doctrine means that a devise of an estate for life together with an unfettered power of disposition either *inter vivos* or by will is meant by the testator to be a devise of the fee simple.[4] And the will of the testator is the law of the court, so long as his will is not contrary to the law of the land.[5]

A life estate coupled with a power of disposition to be exercised only *at the death* of the devisee would be without the doctrine. Clearly the intention here is not to pass the fee simple. The power of disposition is not without restraint. Consequently, such a devise is held to pass merely a life estate, coupled with a power of appointment by will, [6] or possibly by deed to take effect at the death of the devisee.[7]

(2) Where a life estate is coupled with an absolute power of disposition, the fee passes, and *any remainder over of what remains undisposed of by the devisee is void for repugnancy and uncertainty.* Whereas the first doctrine of *May* v. *Joynes, supra,* seeks to express the will of the testator, this second doctrine plainly seeks to abrogate it. The rule is abolished and the intent given effect by § 5147 of the Code of 1919, which validates the remainder over. This statute is limited in its operation to the validating of remainders over after *life estates* coupled with absolute power of disposition.[8] The situation remains unchanged as concerns remainders over after an express fee simple or after a general devise (no particular estate being named) coupled with an absolute power of disposition. In these cases the remainder over is void for repugnancy.[9] In case the power of disposition is subject to restraint, as where it is to be exercised only by will and not by deed, the rule of *May* v. *Joynes,* does not apply and it takes no statute to validate the remainder over.[10]

To sum up: The first doctrine of *May* v. *Joynes* is in full force and effect in Virginia today. Under it, a life estate coupled with an absolute power of disposition amounts to a fee simple. The *second* doctrine has been abrogated by statute. It provided that any remainder over after a life estate coupled with absolute power of disposition should be void. Such remainders are validated by § 5147 of the new Code.

T. L. P.

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passing a life estate only, coupled with an absolute *power of appointment* in the devisee. Clark *v.* Middlesworth, 82 Md. 240; Paine *v.* Barnes, 100 Mass. 470; Smith *v.* McIntyre, 37 C. C. A. 177, 95 Fed. 585; Roberts *v.* Lewis, 153 U. S. 367; 2 MINOR ON REAL PROPERTY § 1328. This would seem a more natural view than the somewhat artificial construction of testamentary intent adopted in Virginia.

[4] Davis *v.* Kendall, *supra,* and cases cited in the footnote.
[5] Davis *v.* Kendall, *supra.*
[6] Davis *v.* Kendall, *supra.*
[7] Goodloe *v.* Woods, 115 Va. 540.
[8] Revisors' Note to § 5147 Va. Code 1919.
[9] 1 MINOR ON REAL PROPERTY p. 201, footnote 7.
[10] Honaker *v.* Duff, 101 Va. 675, 44 S. E. 900; 3 Va. Law Reg. 65.